

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

03/11/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2001-019133

FILED: \_\_\_\_\_

MARK BEELER

MARK BEELER  
3733 W MISSION LN  
PHOENIX AZ 85051-0000

v.

SHEILA HORTEN

SHEILA HORTEN  
3718 W MISSION LN  
PHOENIX AZ 85051-0000

ADAM P WEBER  
GLENDALE CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This appeal from an order on October 23, 2001 continuing an Injunction Against Harassment after a hearing has been under advisement. This Court has considered and reviewed the record from the Glendale City Court, and the Memoranda submitted by Appellant, Sheila Horten through her counsel. Appellee, Mark Beeler, chose not to file a Memorandum in this case. Counsel for Appellant has requested oral argument in this matter and it does not appear to this Court that oral argument would be helpful.

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IT IS THEREFORE ORDERED denying Request for Oral Argument.

A Petition for Injunction Against Harassment was granted by the trial court on August 27, 2001. Appellant, Sheila Horten and Appellee, Mark Beeler are neighbors living three houses from each other within the City of Glendale. Appellant requested a hearing on the Injunction Against Harassment and that hearing was held October 23, 2001. At the conclusion of the hearing, the trial court continued the Injunction Against Harassment in full force and effect. Appellant filed a timely Notice of Appeal in this case.

The first issue raised by Appellant concerns whether sufficient evidence was presented that a series of acts occurred which would warrant the issuance of the Injunction Against Harassment. A.R.S. Section 12-1809 provides in Section R that harassment means:

... a series of acts over a period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose.

Appellant argues that the only acts that Appellee testified about before the trial court occurred on August 24, 2001. Appellee argues that no evidence of a "series of acts" was presented because no series of acts occurred in this case. However, the record does not support Appellant's contentions. The record shows that a series of acts did occur on August 24, 2001. The statute clearly provides that the series of acts may occur "over any period of time".<sup>1</sup> The series of acts which occurred August 24, 2001 admittedly occurred during one day. The Court finds no error.

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<sup>1</sup> See A.R.S. Section 12-1809(R).  
Docket Code 019

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The other issues raised by Appellant concern the sufficiency of the evidence to warrant the trial court's conclusions and order continuing the Injunction Against Harassment in full force and effect. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>2</sup> All evidence will be viewed in a light most favorable to sustaining a verdict and all reasonable inferences will be resolved against the Appellant.<sup>3</sup> If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Appellant.<sup>4</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>5</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>6</sup> The Arizona Supreme Court has explained in State v. Tison<sup>7</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to

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<sup>2</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>3</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>4</sup> State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>5</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3<sup>rd</sup> 977, review granted in part, opinion vacated in part 9 P.3<sup>rd</sup> 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

<sup>6</sup> Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>7</sup> SUPRA.

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which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>7</sup>

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of the Glendale City Court.

IT IS FURTHER ORDERED remanding this matter back to the Glendale City Court for all further and future proceedings in this case.

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<sup>7</sup> Id. At 553, 633 P.2d at 362.  
Docket Code 019